

Subpart 25.1 - Buy American-Supplies

Parent topic: [Part 25 - Foreign Acquisition](#)

25.100 Scope of subpart.

(a) This subpart implements-

- (1) [41 U.S.C. chapter 83](#), Buy American;
- (2) Executive Order 10582, December 17, 1954;
- (3) Executive Order 13881, July 15, 2019; and

(4) Waiver of the domestic content test of the Buy American statute for *acquisition* of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see [25.101\(a\)\(2\)\(ii\)](#).

(b) It applies to *supplies* acquired for use in the *United States*, including *supplies* acquired under contracts set aside for *small business concerns*, if-

- (1) The supply contract exceeds the *micro-purchase threshold*; or
- (2) The supply portion of a contract for services that involves the furnishing of *supplies* (e.g., lease) exceeds the *micro-purchase threshold*.

25.101 General.

(a) The Buy American statute restricts the purchase of *supplies* that are not *domestic end products*. For manufactured

end products, the Buy American statute and E.O. 13881 use a two-part test to define a *domestic end product*.

- (1) The article *must* be manufactured in the *United States*; and

(2)

(i) Except for an *end product* that consists wholly or *predominantly of iron or steel or a combination of both*, the cost of domestic *components must* exceed 55 percent of the cost of all the *components*. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for *acquisitions* of COTS items (see [12.505\(a\)](#)) (but see paragraph (a)(2)(ii) of this section).

(ii) For an *end product* that consists wholly or *predominantly of iron or steel or a combination of both*, the cost of *foreign iron and steel must* constitute less than 5 percent of the cost of all the *components* used in the *end product* (see the definition of "*foreign iron and steel*" at [25.003](#)). The cost of *foreign iron and steel* includes but is not limited to the cost of foreign iron or *steel mill products* (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the

manufacture of the *end product* and a good faith estimate of the cost of all foreign iron or *steel components* excluding COTS *fasteners*. This domestic content test of the Buy American statute has not been waived for *acquisitions* of COTS items in this category, except for COTS *fasteners*.

(b) The Buy American statute applies to small business set-asides. A manufactured product of a *small business concern* is a *U.S.-made end product*, but is not a *domestic end product* unless it meets the domestic content test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a *foreign end product* are listed at [25.103](#). The unreasonable cost exception is implemented through the use of an evaluation factor applied to low *foreign offers* that are not *eligible offers*. The evaluation factor is not used to provide a preference for one *foreign offer* over another. Evaluation procedures and examples are provided in [subpart 25.5](#).

25.102 Policy.

Except as provided in [25.103](#), acquire only *domestic end products* for public use inside the *United States*.

25.103 Exceptions.

When one of the following exceptions applies, the *contracting officer may* acquire a *foreign end product* without regard to the restrictions of the Buy American statute:

(a) *Public interest*. The *head of the agency may* make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American statute.

(b) *Nonavailability*. The Buy American statute does not apply with respect to articles, materials, or *supplies* if articles, materials, or *supplies* of the class or kind to be acquired, either as end items or *components*, are not mined, produced, or manufactured in the *United States* in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations*.

(i) A nonavailability determination has been made for the articles listed in [25.104](#). This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before *acquisition* of an article on the list, the procuring agency is responsible to conduct *market research* appropriate to the circumstances, including seeking of domestic sources. This applies to *acquisition* of an article as-

(A) An *end product*; or

(B) A significant *component* (valued at more than 50 percent of the value of all the *components*).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the *contracting officer* learns at any time before the time designated for receipt of bids in sealed bidding or final *offers* in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the *solicitation*. The *contracting officer must*-

(A) Ensure that the appropriate Buy American statute provision and clause are included in the *solicitation* (see [25.1101\(a\)](#), [25.1101\(b\)](#), or [25.1102](#));

(B) Specify in the *solicitation* that the article is available domestically and that *offerors* and contractors *may not* treat foreign *components* of the same class or kind as domestic *components*; and

(C) Submit a copy of supporting documentation to the appropriate council identified in [1.201-1](#), in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.*

(i) The *head of the contracting activity* may make a determination that an article, material, or supply is not mined, produced, or manufactured in the *United States* in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the *contracting officer* considers that the nonavailability of an article is likely to affect future *acquisitions*, the *contracting officer may* submit a copy of the determination and supporting documentation to the appropriate council identified in [1.201-1](#), in accordance with agency procedures, for possible addition to the list in [25.104](#).

(3) A written determination is not required if all of the following conditions are present:

(i) The *acquisition* was conducted through use of *full and open competition*.

(ii) The *acquisition* was synopsisized in accordance with [5.201](#).

(iii) No *offer* for a *domestic end product* was received.

(c) *Unreasonable cost.* The *contracting officer may* determine that the cost of a *domestic end product* would be unreasonable, in accordance with [25.105](#) and [subpart 25.5](#).

(d) *Resale.* The *contracting officer may* purchase *foreign end products* specifically for commissary resale.

(e) *Information technology that is a commercial product.* The restriction on purchasing *foreign end products* does not apply to the *acquisition* of *information technology* that is a *commercial product*, when using fiscal year 2004 or subsequent fiscal year funds (section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

25.104 Nonavailable articles.

(a) The following articles have been determined to be nonavailable in accordance with

25.103(b)(1)(i):

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bamboo shoots.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynapthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the *United States* and for which domestic editions are not available.

Brazil nuts, unroasted

Cadmium, ores and flue dust.

Calcium cyanamide.

Capers.

Cashew nuts.

Castor beans and castor oil.

Chalk, English.

Chestnuts.

Chicle.

Chrome ore or chromite.

Cinchona bark.

Cobalt, in cathodes, rondelles, or other primary ore and metal forms.

Cocoa beans.

Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.

Coffee, raw or green bean.

Colchicine alkaloid, raw.

Copra.

Cork, wood or bark and waste.

Cover glass, microscope slide.

Crane rail (85-pound per foot).

Cryolite, natural.

Dammar gum.

Diamonds, industrial, stones and abrasives.

Emetine, bulk.

Ergot, crude.

Erythrityl tetranitrate.

Fair linen, altar.

Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

Goat and kidskins.

Goat hair canvas.

Grapefruit sections, canned.

Graphite, natural, crystalline, crucible grade.

Hand file sets (Swiss pattern).

Handsewing needles.

Hemp yarn.

Hog bristles for brushes.

Hyoscine, bulk.

Ipecac, root.

Iodine, crude.

Kaurigum.

Lac.

Leather, sheepskin, hair type.

Lavender oil.

Manganese.

Menthol, natural bulk.

Mica.

Microprocessor chips (brought onto a Government *construction* site as separate units for incorporation into building systems during *construction* or repair and alteration of real property).

Modacrylic fiber.

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

Nitroguanidine (also known as picrite).

Nux vomica, crude.

Oiticica oil.

Olive oil.

Olives (green), pitted or unpitted, or stuffed, in bulk.

Opium, crude.

Oranges, mandarin, canned.

Petroleum, crude oil, unfinished oils, and finished *products*.

Pine needle oil.

Pineapple, canned.

Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.

Pyrethrum flowers.

Quartz crystals.

Quebracho.

Quinidine.

Quinine.

Rabbit fur felt.

Radium salts, source and special nuclear materials.

Rosettes.

Rubber, crude and latex.

Rutile.

Santonin, crude.

Secretin.

Shellac.

Silk, raw and unmanufactured.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

Spices and herbs, in bulk.

Sugars, raw.

Swords and scabbards.

Talc, block, steatite.

Tantalum.

Tapioca flour and cassava.

Tartar, crude; tartaric acid and cream of tartar in bulk.

Tea in bulk.

Thread, metallic (gold).

Thyme oil.

Tin in bars, blocks, and pigs.

Triprolidine hydrochloride.

Tungsten.

Vanilla beans.

Venom, cobra.

Water chestnuts.

Wax, carnauba.

Wire glass.

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

Yeast, active dry and instant active dry.

(b) This list will be published in the *Federal Register* for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list *may* be submitted at any time and *should* provide sufficient data and rationale to permit evaluation (see [1.502](#)).

25.105 Determining reasonableness of cost.

(a) The *contracting officer*-

(1) *Must* use the evaluation factors in paragraph (b) of this section unless the *head of the agency* makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency *acquisitions*, the agency evaluation factors *must* be published in agency regulations; and

(2) *Must* not apply evaluation factors to *offers of eligible products* if the *acquisition* is subject to a trade agreement under [subpart 25.4](#).

(b) If there is a *domestic offer* that is not the *low offer*, and the restrictions of the Buy American statute apply to the *low offer*, the *contracting officer must* determine the reasonableness of the cost of the *domestic offer* by adding to the price of the *low offer*, inclusive of duty-

(1) 20 percent, if the lowest *domestic offer* is from a large business concern; or

(2) 30 percent, if the lowest *domestic offer* is from a *small business concern*. The *contracting officer must* use this factor, or another factor established in agency regulations, in small business set-asides if the *low offer* is from a *small business concern* offering the product of a *small business concern* that is not a *domestic end product* (see [subpart 19.5](#)).

(c) The price of the *domestic offer* is reasonable if it does not exceed the evaluated price of the *low offer* after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at [subpart 25.5](#).)